

Letter to Alexander Graham Bell, July 23, 1912

July 23, 1912. Dr. Alexander Graham Bell, Beinn Bhreagh, near Baddeck, Victoria County, Nova Scotia. Dear Dr. Bell:—

Bell et al v. Myers — Interference 34,455.

The files in this case have now been laid open, and it appears that your patent is involved in interference with an application of George Francis Myers filed Oct. 31, 1911, Serial N o 657,719, which application is a division of Myers' application Serial N o 466,080, filed Dec. 5, 1908. In view of the fact that the date of filing of Myers' original application was prior to the date of filing of the application on which the patent issued (April 8, 1909), Myers is the senior party, and it will be incumbent upon us to first take testimony unless we can have the interference dissolved.

For your information, we enclose herewith copy of Myers' preliminary statement, copy of the original description of his divisional application with which we are involved in interference, copy of the original description and claims of his application 466,080, and photo-prints of the drawings of his divisional case. Figs. 1 and 2 of these drawings are part of the drawings of the original case 466,080.

As you will observe, neither of the descriptions of which copies are forwarded to you state in so many words that the lateral balancing rudders of Myers' device are normally arranged at a zero angle of incidence. It, however, appears from Figs. 1 and 2 of the prints sent you that they are arranged at a zero angle of incidence. We accordingly believe that we will be unable to have this interference dissolved on the ground that Myers has no right to make the claims of the issue, particularly in view of the fact that the Primary Examiner has passed on this point in as much as he suggested to Myers that he could make certain of the claims of the patent. We would be pleased if you would consider these papers and

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let us have the benefit of any suggestions which you may have to offer, either as to the operativeness of Myers' device as described and illustrated or as to his right to make the claims of the issue.

We shall make a motion to dissolve on the ground that Myers has no right to make the claims of the issue inasmuch as there is no disclosure — notwithstanding the drawings — that these lateral balancing rudders are normally arranged at a zero angle of incidence, as it is nowhere stated that the position of the rudders illustrated in the drawings is the normal position. We have little confidence in sustaining this contention, but inasmuch as, if it is successful, it will obviate much labor and expense, we shall make the point and press it as hard as possible.

You will observe that in Myers' preliminary statement he alleges conception on or about the 27th day of January 1894 and that he first reduced the invention to practice by the filing of an application for patent on January 29, 1897. We feel practically certain that the counts of the issue would not read on the disclosures of this application which was filed on January 29, 1897, or the Primary Examiner would have placed us in interference with said application. You will observe that Myers' original application 466,080 was filed on Dec. 5, 1908, several months after he had observed the construction of the interference issue being used on the "June Bug".

We have not ordered certified copies of the file-wrappers and contents of the two Myers' applications referred herein, inasmuch as the contents are so voluminous that they would involve a considerable expense. Further, most of the mass of material in the two file wrappers is not pertinent. In view of the situation as now presented to us, we must confront the probability of having to introduce our prima facie case sometime this fall. The Examiner of Interference has already fixed October 12, 1912 as the time for completing this prima facie testimony, but inasmuch as we shall make a motion to dissolve a new limit will be later fixed — and probably several months later than the date indicated. The limit of time for making motions in this matter is August 10, 1912, and we would be obliged if you would

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let us hear from you in connection with the foregoing as soon as possible. We also enclose herewith for your information copy of the declaration of the interference and copies of your preliminary statement. If among your papers at Baddeck you can discover any drawings, publications or other records that would establish the dates alleged, it would certainly be well that we have the same in hand as soon as possible so that we may know on just what we will have to rely. We presume that you would prefer to give your deposition in this matter in Washington, and we would like to know promptly when you expect to return to this city in order that we may arrange, if possible, that our time for taking testimony shall cover this period.

Have you discussed this interference with Mr. Baldwin and does he remember the general discussion had on April 6, 1908 with respect to arranging the lateral balancing rudders at a zero angle of incidence?

You may retain all of the enclosed documents for your files.

With best regards and wishes, Sincerely yours, K/W Enclosures: